

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion to conduct an investigation on intrastate switched access charge policies and regulation codified in Neb. Rev. Stat. § 86-140.

Application No. C-4145/
NUSF-74/
PI-147

COMMENTS OF AT&T COMMUNICATIONS
OF THE MIDWEST AND TCG OMAHA, INC.

AT&T Communications of the Midwest, Inc. and TCG Omaha, Inc., (collectively referred to as AT&T) submit the following comments in response to the Order Opening Docket and Seeking Comment (the "Order Opening Docket") issued by the Nebraska Public Service Commission ("Commission") on February 24, 2009. AT&T respectfully submits the following comments.

A. Order Opening Docket

In its Order Opening Docket the Commission sets forth the purpose for opening this docket, which is "to conduct an investigation on access charge policies and to clarify the minimum criteria required under Neb. Rev. Stat. § 86-140 which governs access rate changes." Order Opening Docket at 2. Specifically, the Commission seeks comments from all interested parties on the following proposals:

1. The NUSF-EARN form compiled on a supported services basis as a tool to measure the cost of providing access in conjunction with supported services.
2. The NUSF-EARN form to consider the federal and state universal service support received by the requesting carrier.
3. Alternative revenue generation sources for the carrier, including local rates in both urban and rural areas.



4. Establish a reasonable rate-of-return figure for carriers seeking access rate increases along with establishing an appropriate test year.
5. Examine the minutes of use (mou) demand and access line counts of the carrier, consistent with a specific test year.

Additionally, the Commission seeks comments from all interested parties on the following questions:

1. Should limits be placed on the frequency of access cases that any carrier can file with the Commission?
2. How are access rates structured and does the structure vary from carrier to carrier? Should the structure of access rates affect the Commission's analysis of access rate increases?
3. Are the Commission's initial policy goals set out in 1999 for intrastate switched access reform still valid today? Have they been achieved? What further steps, if any, should be considered?
4. Should the Commission's policy of intrastate switched access rate reform be modified? If so, in what way?

B. Preliminary Comments

AT&T commends the Commission for taking this step toward dealing with a problem with intrastate access that is distorting the competitive landscape in several ways. At its beginning, shifting of intrastate access rates to levels commensurate with interstate access rates was a central premise in the development of the Nebraska Universal Service Fund ("NUSF"). However, two divergent themes have undermined this excellent goal.

First, federal access charge policy has shifted over time with the adoption of the CALLS¹ and MAG² order and the development of an expansive federal universal service funding

¹ *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service, Sixth Report and Order, etc.*, FCC 00-193, CC Docket Nos. 96-262, 94-1, 99-249, 96-45 (rel. May 31, 2000) [hereinafter "*CALLs Order*"].

² *In the Matter of Multi-Assoc. Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, Second Report and Order and*

mechanism. As a result, interstate access rates have dropped precipitously since the inception of the NUSF and the underlying assumption of access parity has been lost as the NUSF has no mechanism to keep pace with federal access rate changes. Thus, even though the specific rate levels of today differ from those in place before the inception of the NUSF, the differential between intrastate and interstate access charges has once again grown to significant levels and has precipitated a large and growing arbitrage across technologies.

Some of the harms inflicted on competition and consumers by the current access regime are well described by Dr. Debra J. Aron, an Adjunct Associate Professor at Northwestern³ in her testimony before the New Jersey Board of Public Utilities; she essentially said, in summary, the harms caused by the current state access regime could include:

- Consumers pay excessive prices for wireline intrastate toll services and are unduly discouraged by these uneconomically high prices from using and enjoying long distance service on the wireline network;
- Consumers are unduly discouraged from making wireline rather than wireless or VoIP long distance calls;
- Competition between technologies is distorted by an access regime that permits some providers to pay substantially lower rates for materially identical functionality as that provided to other carriers at much higher rates;⁴

The harms described by Dr. Aron are as applicable today in Nebraska as they are in New Jersey. Legacy wireline toll customers pay a disproportionate amount of implicit subsidy to support high cost objectives compared to all others who have left wireline toll service for a competitive alternative where the alternative provider offers cheaper long distance calling because it is not

Further MPRM, FCC 01-304, CC Docket Nos. 00-256, 96-45, 98-77, 98-166 (Rel. Nov. 8, 2001) [hereinafter "*MAG Order*"].

³ Dr. Aron holds a Ph.D. in Economics from the University of Chicago, an AB (*summa cum laude*) in Economics from UCLA and she currently teaches the Communication Systems Strategy and Management Program, in the School of Communications at Northwestern.

⁴ *In the Matter of the Board's Investigation and Review of Local Exchange Carrier Intrastate Exchange Access Rates*, Before the State of new Jersey Board of Public Utilities, Direct Testimony of Dr. Debra J. Aron, Docket No. TX08090830. Public Version (Feb. 13, 2009).

saddled with the high access burden. In short, AT&T believes consumers are better served by a high cost support mechanism that is explicit, stable and supported equitably.

Second, as was expressed by early recipients of NUSF support, without an adequate control on the access rates charged by competitive local exchange carriers ("CLECs"), the incumbent local exchange carriers ("ILECs") may be placed at a huge competitive disadvantage. CLECs charging excessive access rates have the opportunity to keep their local rates artificially low by extracting monopoly rents from interexchange carriers that cannot avoid the access rates charged. At the same time, ILECs maintain lower access rates through higher local rates and must meet CLECs in the local service marketplace. The inevitable squeeze the incumbent is placed in is simply unfair and should not be perpetuated.

With this dual context in mind, AT&T suggests that now is the time to further reform the NUSF by simply establishing parity with interstate access rates and structures as the single best means to ensure that Nebraska statutory requirements are met, technological arbitrage is limited and the local competitive landscape is not distorted. This reform may be accomplished by implementing modifications to the access component of the company-specific benchmarks in the Support Allocation Methodology and simultaneously increasing funding of the NUSF on an overall fund-level revenue-neutral basis.

C. AT&T's Specific Comments on the Commission Proposals

1. The NUSF-EARN form compiled on a supported services basis as a tool to measure the cost of providing access in conjunction with supported services.

By itself, the NUSF-EARN form is wholly inadequate as evidence to support any specific intrastate access rate level. The form enables only the grossest assessment of the earnings level of the applicant company for the sum of all supported services. In its current form, the NUSF-EARN form develops a maximum allowable net income before income taxes, reporting period

expenses, and total revenues including, among other things, local service, network access, long distance, various state and interstate universal service support mechanisms and miscellaneous revenues net of uncollectibles. Investment, expenses and revenues are reported on a jurisdictionally separated basis.

The whole concept of separations and attribution of investment and expenses by jurisdiction under Federal Communications Commission ("FCC") rules found in 47 C.F.R. Parts 36, 64, and 69, is likely foreign to non-ILECs, creating a significant level of difficulty for implementation of Neb. Rev. Stat. § 86-140 for non-ILECs.

Fundamentally, the NUSF-EARN form does not identify the costs of intrastate access services, a critical component necessary to implement the Neb. Rev. Stat. § 86-140 requirement that the Commission not order access charge rates that are below its specific annual costs. To satisfy the statutory requirement, AT&T recommends that company-specific interstate access rates be used as a proxy for intrastate access cost for all carriers on the rebuttable presumption that interstate rates at least cover costs. If interstate rates were below costs, the carriers would likely say so and litigate the issue with the FCC. In the alternative for ILECs, an embedded cost or forward-looking model could be utilized to indentify the underlying cost of access services, excluding any subsidy elements such as the carrier common line rate. For competitive LECs, lacking a company-specific cost showing, the Commission should implement benchmark maximum allowable access rates pegged to the rates specific to each individual ILEC serving area.

2. The NUSF-EARN form to consider the federal and state universal service support received by the requesting carrier.

The NUSF-EARN form already considers federal and state universal service support received by the requesting carrier so it is unclear to AT&T what is being proposed. As discussed

in response to Proposal 1 above, the NUSF-EARN form is inadequate to meet the requirements of Neb. Rev. Stat. § 86-140. Nevertheless, all sources of applicable federal and state universal service support should be recognized as part of the process in any intrastate switched access docket.

3. Alternative revenue generation sources for the carrier, including local rates in both urban and rural areas.

The competitive and regulatory environment in which the industry finds itself today is not conducive to deriving excess levels of subsidy from access services. Residual ratemaking with access rates used to make up any shortfalls in revenues versus just and reasonable achieved rates of return is simply not a viable option. As such, and consistent with Nebraska's NUSF process, ILECs and CLECs alike should be required to either show that their basic local service rates are set at or above appropriate benchmark levels or revenues should be imputed to a company's results as though the rates were set at benchmark levels. This approach, along with setting access rates at parity with interstate levels will help ensure that LECs responsibly price local services and interexchange carriers are not gouged by excessive access rates by some LECs in order to subsidize competitive entry into the local market.

4. Establish a reasonable rate-of-return figure for carriers seeking access rate increases along with establishing an appropriate test year.

Setting intrastate access rates at parity with interstate rates would obviate any need to consider a rate of return for use in intrastate access rate setting. However, should an intrastate rate setting process even be needed, one key in determining reasonable access rates is the establishment of a just and reasonable minimum rate of return. Ideally, the rate of return would be established on a company-specific basis, perhaps based on certain reasonable generic assumptions related to capital structure (e.g., use of actual debt and equity structure up to a

maximum assumed “efficient” equity component), actual cost of debt, and a generic assumed cost of equity that appropriately reflects a company’s cost structure.⁵

5. Examine the minutes of use (mou) demand and access line counts of the carrier, consistent with a specific test year.

As with rate of return, consideration of actual data is an important factor. Once again, though, setting access rates at parity with interstate levels obviates the need for detailed information for establishment of intrastate access rates.

D. AT&T’s Specific Comments on the Commission’s questions

1. Should limits be placed on the frequency of access cases that any carrier can file with the Commission?

Supposing the Commission adopts a requirement for the establishment of intrastate access rates at parity with interstate levels as of a prospective date certain, the need for access cases will be eliminated. Without an access parity requirement, AT&T would recommend that LECs be limited to access rate setting cases once every three years.

2. How are access rates structured and does the structure vary from carrier to carrier? Should the structure of access rates affect the Commission’s analysis of access rate increases?

Access rates have fixed (per month) and variable (per minute) charges and the structure can vary between state and interstate service for an individual carrier and the overall structure can vary from carrier to carrier. While AT&T does not advocate a single overall access rate structure that would require carriers employ the same rate elements, AT&T does suggest that the Commission require companies to establish, if they have not done so already, an intrastate access structure that is the same as its interstate structure. With uniform interstate and intrastate access

⁵ For example, private or public investor-owned utilities might be allowed a set return on equity while cooperatives would be allowed an overall rate of return commensurate with their debt covenants as their subscriber-supplied equity is costless.

rate structures, the Commission's analysis of any proposed access rate increase should not be affected.

3. Are the Commission's initial policy goals set out in 1999 for intrastate switched access reform still valid today? Have they been achieved? What further steps, if any, should be considered?

The Commission's goals of reforming access rates to eliminate several implicit subsidy rate elements (e.g. the Primary Interexchange Carrier Charge ("PICC"), the transport interconnection charge ("TIC") and the carrier common line ("CCL") element appear to have been accomplished for ILECs. The Commission has generally found that implicit subsidies in intrastate access charges are inappropriate and should be replaced with cost based explicit support through a combination of local rate increases and state and federal universal service funds. As discussed above, the progressive transition of interstate access rates to lower levels has now left intrastate access rates burdened with substantial implicit subsidies. To this extent, the Commission's goals have not been met.

What is still missing is a requirement that all LECs, incumbent and competitive, establish, as of a prospective date-certain, intrastate switched access rates equal to the interstate rates they charge. For CLECs in particular, it is imperative that the Commission now establish upper bounds on CLEC access rates based on the ILEC rates where the CLEC is competing.

4. Should the Commission's policy of intrastate switched access rate reform be modified? If so, in what way?

As discussed immediately above, it is imperative that the Commission now establish upper bounds on CLEC access rates based on the ILEC rates where the CLEC is competing.

E. Conclusion

Examination of the current access policy and the impact that it has had on incumbents, like Qwest, clearly suggests that the Commission should alter the current course. The easiest and

most efficient way to establish clear criteria under Neb. Rev. Stat. § 86-140 would be for the Commission to essentially re-adopt a newer form of its parity proposal from 1999. Thus, if the Commission moved intrastate access rates and their structure to parity with the interstate rates and structure, it could be assured that access rates cover their cost consistent with the statutory directives without having to endure the time-consuming and tortuous disputes over costs and costs studies that inevitably arise when any commission or carrier offers a new cost methodology or study to prove-up intercarrier compensation needs.

Dated this 23rd day of April, 2009.

Respectfully submitted,



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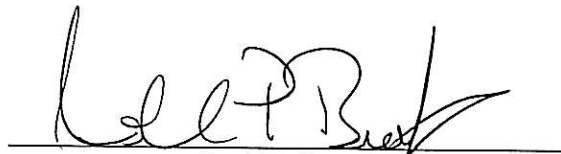
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 23rd day of April, 2009, one original, one copy and one electronic copy of the Comments of AT&T Communications of the Midwest and TCG Omaha, Inc. on Order Opening Docket and Seeking Comment in Application No. C-4145/NUSF-74/PI-147 were hand delivered to:

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